sion of law. To go further I need only advert to two English authorities as I am inclined to believe that rule 11 was introduced with these authorities in mind.

In *Ex parte Fewings*[1] Fry L.J. at page 355 said:

"When there is a covenant for the payment of a principal sum, and a judgment has been obtained upon the covenant for that sum, it is plain that the covenant is merged in the judgment, and, if there is a covenant to pay interest which is merely incidental to the covenant to pay principal debt, that covenant also is merged in a judgment on the covenant to pay the principal debt. Of course covenant to pay interest may be so expressed as not to merge in a judgment for the principal; for instance, if it was a covenant to pay interest so long as any part of the principal should remain due either on the covenant or on a judgment."

In *Economic Life Assurance Society* v. *Usborne & Ors.*[2] Earl of Halsbury at pages 149-50 remarking that Fry L.J. has put the point with great precision and accuracy said:

"My Lords, if that is accurate, it seems to me that that the question is a simple one; it is a question of the construction of this particular deed and the remedy that is now being enforced.

My Lords, it is not necessary to proceed to discuss what follows from what I have said, because it is manifest on the true construction of this instrument, that there is a right to have the interest at the agreed rate...."

In the present case the appellant agreed to the bank rate of 12.5% for the overdraft facilities. The rule to my mind, precludes the court from disturbing the rate that has been agreed, unless, of course, if it can be shown that the rate as imposed is illegal.

Appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Chua Bros.; L.M. Ong.*

TAN CHENG HIN & ANOR. v. LIM JEW SIANG & ORS.

[O.C.J. (Mohamed Azmi J.) July 10, 1975]

[Kuala Lumpur — Civil Suit No. 1341 of 1974]

Practice & Procedure — Injunction — Interim injunction — Application for dissolution of — Status Quo — Preservation of — Whether circumstances permit.

Land Laws — Lease — Unregistered lease — Whether void for non-registration — National Land Code, s. 222.

By an agreement made in May 1966, the defendants as trustees of an association known as "SKCWK" leased certain portions of the premises in dispute to the plaintiffs as trustees of Nanyang Hotel for twenty years with effect from August 15, 1965. When the agreement was executed, the lease could not be registered because at that time "SKCWK" had only been granted an Approved Application under the old Land Code in respect of the land upon which the demised premises were situated. "SKCWK" had also assigned the Approved Application to Malayan Banking Berhad to secure a loan from the said bank, as the land could not be charged to the bank at that time in the absence of any Document of Title.

The plaintiffs alleged, *inter alia*, that the said bank held the land as trustee in favour of "SKCWK", and despite the plaintiffs' written request, the defendants had failed to get the bank as their trustee to execute a registrable lease in favour of the plaintiffs for the remainder of the twenty years period. The defendants had issued a notice dated September 19, 1974, purporting to increase the monthly rental of the lease from $2,800 to $4,000 in contravention of the terms of the agreement. In that notice, they indicated that the plaintiffs would have to quit and deliver vacant possession of the premises on or before October 30, 1974 upon failure to pay the increased rent.

The defendants, on the other hand, denied the said allegations, and contended that the 1966 lease agreement was not enforceable and null and void for non-registration by virtue of section 222 of the National Land Code. The defendants applied for dissolution of an interim injunction granted by the lower court in favour of the plaintiffs, restraining the defendants from committing a breach of the said agreement.

Held, dismissing the defendants' application: this is a proper case where the *status quo* should be maintained until the plaintiffs' claim for perpetual injunction or specific performance is disposed off.

Case referred to:-

(1) *Lee Ah Low* v. *Cheong Lap Keen & Anor.* [1970] 1 M.L.J. 7 F.C.

CIVIL SUIT.

John Bernatt for the defendants/applicants.

Y.M. Chin for the plaintiffs/respondents.

Mohamed Azmi J.: By Notice of Motion dated February 21, 1975, the defendants apply for dissolution of an interim injunction granted by Abdul Hamid J. by order made on November 4, 1974. They also apply that the plaintiffs' pleadings be struck off and that the defendants be given judgment on their counterclaim with costs. By the said injunction, the defendants are restrained from committing a breach of the written agreement made in May 1966 between the plaintiffs as trustees for the partners of Nanyang Hotel, and the defendants as trustees of an association known as Selangor Keng Chew Wee Kuan (hereinafter referred to as "SKCWK") touching upon the second, third, fourth and fifth floors and the back portion of the ground floor of the nine-storey building known as premises No. 83, Jalan Sultan, Kuala Lumpur. Before me, only the application for dissolution of the interim injunction was argued. As correctly suggested by Mr. Bernatt, counsel for the defendants, he would only proceed with the other prayers if his application in respect of the injunction was successful.

From the pleadings, it is not in dispute that by virtue of an agreement dated May 1966, the defendants as trustees of "SKCWK" leased the second, third, fourth and fifth floors and the back portion of the ground floor of the premises in dispute to the plaintiffs as trustees of Nanyang Hotel for a period of twenty years with effect from August 15, 1965. When the agreement was executed, the lease could not be registered because at that time "SKCWK" had only been granted an Approved Application under the old Land Code in respect of the land upon which the demised premises are situated. Further, "SKCWK" had also assigned the Approved Application to Malayan Banking Berhad to secure a loan from the said bank, as the land could not be charged to the bank at that time in the absence of any Document of Title.

By paragraphs 7 and 9 of the Statement of Claim, the plaintiffs allege that the Selangor State Authority has now granted a lease for 99 years in respect of the said land to Malayan Banking Berhad being assignee of the original Approved Application. It is alleged

that the said bank is now holding the land as trustee in favour of "SKCWK", and despite the plaintiffs' written request, the defendants have failed or omitted to get the bank as their trustee to execute a registrable lease in favour of the plaintiffs for the remainder of the 20 years period. Instead, "SKCWK" has issued a notice dated September 19, 1974 purporting to increase unilaterally the monthly rental of the lease from $2,800 to $4,000 in contravention of the terms of the 1966 agreement. In that notice, they also indicated that the plaintiffs would have to quit and deliver vacant possession of the demised premises on or before October 30, 1974 upon failure to pay the increased rent. The defence have denied all these allegations in their pleadings, affidavits and submission. They maintain that the 1966 lease agreement is not enforceable and null and void for non-registration by virtue of section 222 of the National Land Code. It is argued that when the lease commenced on August 15, 1965 "SKCWK" did not have any registered interest in the land although it might have an equitable interest, and as such the subject-matter of the contract was not in existence when the agreement was made — thus, rendering the agreement unenforceable. The defendants also maintain that the Malayan Banking Berhad is now the registered owner of the land and is not holding it as their trustee, and that there is no provision in the agreement whereby the defendants are bound to get a third party to grant a registrable lease in favour of the plaintiffs. Based on the authority of *Lee Ah Low* v. *Cheong Lap Keen & Anor.*,[1] it is contended that as the plaintiffs have failed to register their interest when they had opportunity to do so, only a monthly tenancy has been created although the agreement is bad in law. In the event, the plaintiffs are said to be occupying the premises as a monthly tenant and that they are now holding over under sufferance. Their unilateral action in increasing the monthly rent and the notice to quit are therefore valid.

In the course of his submission, Mr. Bernatt has in effect admitted that "SKCWK" might have had an equitable interest in the land when the lease agreement was executed, and as such I find it difficult to conceive how the plaintiffs can be held to be without any equitable remedy. Further, in view of the defendants' denial that Malayan Banking is merely holding the land as their trustee, it is not clear whether they have any legal right to issue the notice to quit in the first instance. However, without going into the merits of the arguments and counter-arguments by both counsel, it cannot be denied that the plaintiffs have been in occupation of the demised premises since August 15, 1965. The defendants by their conduct have allowed the plaintiffs to carry on hotel business at the demised premises on the understanding that the lease would extend for a period of 20 years. Having regard to the nature of the business and the conduct of the parties, in my view, the interim injunction should continue until the final determination of the various issues raised in the pleadings. Irreparable damages would be caused to the plaintiffs if the interim injunction is dissolved before the final disposal of the plaintiffs' claim and the defendants' counterclaim. Whereas, should the plaintiffs fail in their claim, the defendants can always be satisfactorily compensated in damages. In the premise, I find this is a proper case where the *status quo* should be maintained until the plaintiffs' claim for perpetual injunction or specific performance is disposed off. The defendants' application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Baharuddin, Bernatt, Tan & Ker; Allen & Gledhill.*

BAN GUAN SENDIRIAN BERHAD v. UNITED MALAYSIAN STEEL MILLS BERHAD

[O.C.J. (Wan Suleiman F.J.) October 23, 1975]

[Kuala Lumpur — Summons In Chambers in Civil Suit No. 79 of 1974]

Practice & Procedure — Alleged contract — Repudiation of it by defendants — Defence of fraud and counterclaim — Plaintiffs' application to strike out counterclaim — Whether counterclaim frivolous and vexatious.

Practice & Procedure — Pleading — Rules of — Whether counterclaim frivolous and vexatious — R.S.C. 1957, O. 25 r. 4.

The plaintiffs alleged that on or about December 12, 1972, the plaintiffs and the defendants entered into an agreement whereby the plaintiffs agreed to purchase 30,000 tons of steel bars in accordance with a price list and to be delivered by amounts of approximately 1,000 tons per month commencing from 1973. The plaintiffs alleged that on November 12, 1973, the defendants repudiated the contract and denied its existence. The defendants, instead, alleged that the plaintiffs had committed the tort of conspiracy, the effect of which was to make static the price of steel bars to be supplied to the plaintiffs for a period of at least 39 months, thereby causing loss to the defendants. The defendants also counterclaimed *inter alia* for a declaration that the alleged agreement was invalid and unenforceable and for rescission of the contract.

The plaintiffs applied for an order that the defendants' counterclaim be struck out on the grounds that it was frivolous, vexatious and disclosed no reasonable cause of action.

Held, dismissing the plaintiffs' application: on the pleadings there were undoubtedly triable issues both of fact and law.

Case referred to:-

(1) *Crofter Hand Woven Harris Tweed Co. Ltd.* v. *Veitch* [1942] A.C. 435, 440.

CIVIL SUIT.

S.D.K. Peddie for the applicants/plaintiffs.

Koh Wee Kiat for the defendants.

Wan Suleiman F.J.: This is an application by way of summons-in-chambers by the plaintiffs for an order that the counterclaim filed by the defendants be struck out on the grounds that it is frivolous, vexatious and discloses no reasonable cause of action.

To support his application, Mr. Peddie relies solely on the pleadings.

In the statement of claim the plaintiffs/applicants who are the plaintiffs in Civil Suit No. 79 of 1974 allege that on or about December 12, 1972 the plaintiffs and the defendants entered into an agreement whereby the plaintiffs agreed to purchase 30,000 tons of steel bars in accordance with a price list dated July 15, 1971 and to be delivered by amounts of approxi-